



July 20, 2000

Mr. Michael Wied
Attorney
Administration and Northern Legal Services
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

OR2000-2726

Dear Mr. Wied:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137818.

The Texas Water Development Board (the "board") received a written request for all documents pertaining to two loan applications relating to the City of Fate. You contend that four documents that you submitted to this office are excepted from required public disclosure pursuant to section 552.107(1) of the Government Code.

Section 552.107(1) of the Government Code excepts from required public disclosure information coming within the protection of the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences. *See* Open Records Decision No. 574 (1990). After reviewing the four memoranda at issue, we conclude that Documents 1, 2, and 3 consist of attorneys' legal opinion and advice to board. The board, therefore, may withhold these three memoranda in their entirety pursuant to section 552.107(1) of the Government Code.

As to Document 4, although you represent that this document was prepared by an attorney, you do not indicate that the document or any of the information contained therein constitutes a communication. You also do not indicate that any of the information in the document, if released, would reveal a client confidence. Additionally, unlike the other documents you have submitted, Document 4 does not itself demonstrate that it consists of or contains a communication. A necessary element of the attorney-client privilege is that the information constitutes a communication. *See* Texas Rule of Evidence 503(b)(1); *see also* Open Records Decision No. 462 at 9 (1987). Because you have not demonstrated that Document 4 consists of or contains a communication, you have not demonstrated that the attorney-client privilege applies to the document. We therefore conclude that Document 4 is not excepted from required disclosure by section 552.107(1). Because you also have raised no other exception to disclosure for this document, we conclude that the board must release it.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

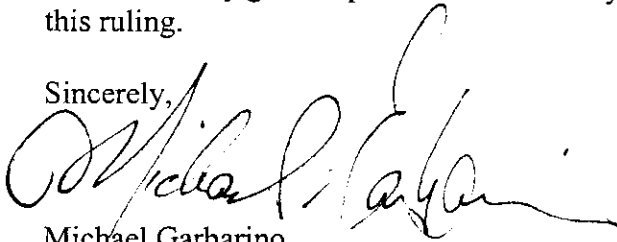
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino", is written over the typed name and title.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/RWP/ljp

Ref: ID# 137818

Encl. Submitted documents

cc: Mr. R. Brad Lamberth
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(w/o enclosures)